IN THE HIGH COURT OF BOMBAY AT GOA.

SECOND APPEAL NO. 56 OF 2001.

1. Lalu Rogunath Shirodkar
   (expired) through his
   LRs.:
   (a) Laxmi Ladu Shirodkar,
       r/o Ribandar, Goa.
   (b) Mr. Manohar Ladu Shirodkar,
       Businessman,
   (c) Mrs. Mohini Ladu Shirodkar,
       w/o LR No. (b), both r/at
       Opp. Hotel Mishel,
       Ribandar, Goa.
   (d) Mr. Suresh Ladu Shirodkar,
       Businessman,
   (e) Mrs. Supriya S. Shirodkar,
       w/o LR No. (d), both r/at
       Near GMC Hospital, H.No. 64,
       Ribandar, Goa.
   (f) Mr. Ramakant Ladu Shirodkar,
   (g) Mrs. Shanti R. Shirodkar,
       w/o LR No. (f), both
       residing near GMC Hospital,
       H.No. 64, Ribandar.
   (h) Mrs. Kamal Raghuvir Shirodkar,
       r/o Surla both Pilar Post,
       St. Lawrence, Agasaim.
   (i) Suman Prabhakar Nagvenkar,
       r/o Fondvem, Ribandar.
   (j) Prabhakar Atmaram Nagvenkar,
       r/o Fondvem, Ribandar, Goa. ... Appellants.

Versus

1. Panduranga Rogunath Shirodkar
   expired through LRs.
2. Rukmini Pandurang Shirodkar,
   w/o Pandurang Rogunath Shirodkar,
   r/o Ribandar, Goa.
   (a) Prafulla Pandurang Shirodkar,
   (b) Baskar D. Nagvenkar, both
       r/at 701, Sahakar Building,
       P.M. Road, Virle Parle,
       Mumbai-57.
   (c) Shrikant Pandurang Shirodkar,
   (d) Anjali Shrikant Shirodkar,
       both r/at Behind Petrol Pump
       Old Goa.
   (e) Ramesh Pandurang Shirodkar,
   (f) Shanbangi Ramesh Shirodkar,
       both residing behind Petrol
       Pump, Old Goa.
   (g) Ragunath Pandurang Shirodkar,
   (h) Sharad Ragunath Shirodkar,
       both r/at Lake View Colony,

Campal, Miramar, Goa.
(i) Kalidas Pandurang Shirodkar,
residing near Divar Ferry,
Old Goa.
(j) Hemalata Umesh Lotlikar,
(k) Umesh D. Lotlikar, both
residing near P.W.D. Office,
Tonca, Caranzalem, Panaji.
(l) Satish Pandurang Shirodkar,
(m) Latika Satish Shirodkar,
both residing behind Petrol
Pump, Old Goa.
(n) Yammuna Ratnakar Lotlikar,
(o) Ratnakar G. Lotlikar,
both residing at Phool
Wado, Mannyar-Ganesh House,
Benaulim, Margao.
(p) Naguesh Pandurang Shirodkar,
(q) Shakuntala Naguesh Shirodkar,
both residing at Old Hospital,
Ribandar, Goa.
(r) Godavari Anand Bandodkar,
(s) Anand Vithal Bandodkar,
both residing Opp. Corlim
Industrial Estate, Corlim,
Ilhas Goa. ... Respondents.

Mr. H.D. Naik, Advocate for the Appellants.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Respondents 2, (c) to (e).

Coram: P.V. HARDAS, J.

Date: 16th January 2003.

ORAL ORDER.

This is a Second Appeal at the instance of the original defendants in Special Civil Suit No. 89/85/A. The learned Civil Judge, Senior Division, at Panaji, by Judgment and Decree, dated 10th September 1999, had dismissed the suit filed by the present respondents. The original plaintiffs/present respondents had filed Regular Civil Appeal No. 103 of 1999 before the Additional District Judge-II, North Goa, Panaji. The

learned lower appellate Court by its Judgment and Decree, dated 22nd March 2001, allowed the appeal and set aside the Judgment and Decree of the learned trial Court dismissing the suit. Hence the present Second Appeal.

2. The learned lower appellate Court held that the present appellants had admitted the ownership of the plaintiffs to the area occupied by the room alongwith rest of the western half of the property. The learned lower appellate Court also held that the learned trial Court, on appreciation of evidence, had rightly come to the finding that the defendants had failed to establish their right to the structure by prescription, since they failed to establish since when their possession had became adverse vis a vis the plaintiffs, as there was no pleading of hostile possession of title. The learned lower appellate Court, after appreciating the evidence of the parties, came to a finding in paragraph 13 as under:-

> "In the light of all this evidence and the records of previous litigations and the photographs what really emerges is that the suit room which is the subject matter of controversy is no longer in existence. No doubt there is some substance in the contention of ld. advocate Rivonkar that the plaintiff has not established their entitlement to the suit room, still, in view of the material fact that portion of the room was in the property of the plaintiff, the

> defendant could not claim right to it particularly when their claim of being in possession by adverse possession was held against the defendants."

3. The learned lower appellate Court also endorsed the finding of the learned trial Court that the suit filed by the plaintiffs was within limitation and also endorsed the finding that the defendants/present appellants had failed to establish their claim of entitlement to the suit structure. The learned lower appellate Court rightly observed that the Judgment of the learned trial Court "is a bundle of contradictions". In view of this, the learned lower appellate Court allowed the appeal filed by the plaintiffs.

4. Mr. Naik, the learned counsel appearing for the appellants, has stated before me that the suit of the plaintiffs is barred by the principle of res judicata. The learned trial Court while dismissing the suit had come to the conclusion that the suit of the plaintiffs was not hit by the principle of res judicata. The earlier Judgment of the trial Court holding that the suit was barred by the principle of res judicata, without deciding the other issues, had been set aside by the learned lower appellate Court in appeal and had remitted the matter to the learned trial Court for deciding the suit on merit. The said Judgment of the learned lower appellate Court was not challenged in Second Appeal before this Court. The learned trial

Court in paragraph 26 of its Judgment has held that the earlier suit was on a different cause of action and the present suit was filed on a different cause of action in relation to the challenge under Order II, Rule 2 of the Code of Civil Procedure. In respect of the principle of res judicata, the learned trial Court found that the cause of action was entirely different and, therefore, it could not be said that the matter in issue was directly and substantially in issue in the former suit and, accordingly, the learned trial Court found that the principle of res judicata was inapplicable.

5. Turning to the next point which was raised before me that the learned lower appellate Court has taken into consideration the subsequent event, that is, that the suit room was no longer in existence. Nothing really turns on the existence or non-existence of the room as both the Courts below had found that the appellants had not been successful in establishing their title to the property.

6. I have given my anxious consideration to the submissions advanced by Mr. Naik, learned counsel on behalf of the appellants and Mr. Lotlikar, learned senior counsel on behalf of the respondents and in my considered opinion, the Second Appeal does not involve any substantial question of law to merit admission. The

findings of the learned lower appellate Court are not perverse and, therefore, need no interference in Second Appeal. The Second Appeal is, thus, devoid of any merit and is dismissed in limine.

(P.V. HARDAS)
JUDGE.

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